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From:

Sent: Monday, July 11, 2011 10:21:22 AM

To:

Cc:

Subject: RE: Informal Advice Requested at your Convenience

Your situation is typical. An LLC can be member-managed or manager-managed. In the case of a manager-managed LLC, all members are deemed member-managers eligible to be designated as Tax Matters Partner. A TMP designation is a designation of a member to represent the other members in a TEFRA partnership audit of the members. It is not a designation to be a manager of the LLC itself which is not even a party to the TEFRA partnership proceeding. See Chef's Choice v. Commissioner, 95 T.C. 388 (1990)(TEFRA proceeding is a group audit of the partners and the partnership entity is not a party to such proceeding). Thus, assuming the person designated was actually a qualified member under the regulations, it was eligible to be designated as the representative of the other partners under federal law for purposes of the TEFRA audit. I.R.C. 6231(a)(7). Acting as such does not make it a "manager" of the LLC contrary to the LLC's operating agreement. Any arguable violation of the operating agreement by the TMP might at best create a cause of action by members of against each other, but would not limit the TMP's powers under the TEFRA partnership provisions to represent the partners in the audit. But see River City Ranches (if IRS is aware that TMP is acting in violation of his fiduciary duty to other partners, IRS may not be able to rely on TMP).